
February 1997

FEDERAL FACILITIES

EPA's Penalties for Hazardous Waste Violations



**Resources, Community, and
Economic Development Division**

B-275734

February 28, 1997

The Honorable Ted Stevens
Chairman, Committee on Appropriations
United States Senate

Dear Mr. Chairman:

The Environmental Protection Agency (EPA) imposes penalties on other federal agencies for violations under the Resource Conservation and Recovery Act (RCRA) of 1976 and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. RCRA controls the management and disposal of hazardous wastes. CERCLA, also known as Superfund, governs the cleanup of sites contaminated by hazardous substances.

If EPA penalizes federal agencies for a violation, they may challenge the assessed penalty under EPA's dispute resolution procedures. The penalty may be upheld, reduced, or eliminated entirely. Agencies may propose projects to benefit the environment as part of the settlement. In some cases, these "supplemental environmental projects" may increase the final settlement amount above EPA's original assessment.

Because of your interest in knowing the frequency of penalties and the costs of settling their final amount, you asked us to determine (1) the number and dollar amount of penalties assessed by EPA against other federal agencies for violations under RCRA and CERCLA and (2) for selected cases, the costs associated with negotiating the final amount of the penalty.

Results in Brief

From November 1989 through October 1996, EPA assessed penalties in 61 cases totaling \$16.4 million against federal agencies for violating the hazardous waste management and cleanup provisions of RCRA and CERCLA. Penalties were assessed against the Departments of Agriculture, Defense, Energy, and the Interior and the U.S. Coast Guard. Forty-one cases having EPA-assessed penalties of \$8.2 million were settled for \$8.4 million, including the value of supplemental environmental projects. Agencies made settlement through direct cash payments of \$2.4 million and also by agreeing to perform supplemental environmental projects costing about \$6 million. Twenty cases with assessed penalties of \$8.2 million are still being negotiated, and final settlements have not been determined.

We reviewed three settled cases that had EPA-assessed penalties of \$6 million against the Departments of Defense and Energy, which represented more than a third of the value of all the assessed penalties. After negotiations—which lasted from 7 to 20 months—were finalized, these cases were settled for \$3.7 million. One case involving a Navy facility was finally settled for \$125,000 more than the assessed penalty because of two supplemental environmental projects. EPA and the Departments of Defense and Energy incurred about \$364,000 in salaries, travel costs, and other costs to negotiate these three settlements. Because each case has its own unique attributes, we cannot say whether these costs would be typical for all cases. We did note that for the most part, the settlement costs reflect the number of personnel assigned to a case and the time they devote to its resolution.

Background

RCRA, as amended by the Federal Facility Compliance Act of 1992, and CERCLA are the primary statutes that impose hazardous waste management and cleanup obligations on federal agencies and that allow the imposition of penalties. EPA has established administrative procedures for appeals of RCRA penalties and dispute resolution procedures for CERCLA penalties assessed against agencies.

Enforcement Under RCRA

RCRA authorizes EPA to regulate the generation, treatment, storage, and disposal of hazardous waste. Regulation is achieved largely through the issuance of permits by EPA or states authorized by EPA to engage in hazardous waste activities. These permits specify the terms and conditions under which the activities must be carried out. For example, federal facilities that handle RCRA-regulated waste must comply with record-keeping, reporting, labeling, treatment, storage, and disposal requirements. In fiscal year 1994, the latest year for which data were available, 2,580 federal RCRA facilities existed.

EPA's RCRA enforcement actions include formal and informal actions. Formal actions, such as EPA orders, may impose a penalty on the facility and require it to take some corrective action within a specified time and refrain from certain behavior or require future compliance. An agency may request a hearing to challenge the facts alleged in EPA's complaint or the amount of the penalty.

Informal actions such as notices of violations, notices of noncompliance, and warning letters are advisory in nature. They inform the manager of a

facility of what violation was found, what corrective action should be taken, and when the corrective action should be taken. Informal actions do not impose penalties or compel action but, if ignored, can lead to more severe actions.

Interagency Agreements Under CERCLA

CERCLA created the Superfund program to clean up hazardous waste sites that were releasing contaminants into the environment. Federal agencies whose properties are on Superfund's National Priorities List—the list of the nation's highest priorities for further study and possible cleanup—must clean them up under EPA's oversight. As of November 1996, 151 federal sites were on the National Priorities List. Section 120 of CERCLA provides that an agency must enter into an interagency agreement with EPA setting forth a plan for cleaning up each facility on the National Priorities List. In most cases, states are also signatories to these cleanup agreements. Under these agreements, failing to comply with the terms and schedules of the cleanup plan may result in EPA-assessed penalties.

Penalties

RCRA allows EPA to impose penalties of up to \$25,000 for each day of noncompliance with the act's provisions. Moreover, the Federal Facility Compliance Act authorizes EPA to exercise its RCRA enforcement authority over federal agencies. Under the Federal Facility Compliance Act, federal facilities are also subject to state fines and enforcement actions. In addition, CERCLA's interagency agreements may contain provisions for penalties of up to \$5,000 for the first week of a violation and up to \$10,000 for each additional week. The actual penalty levied by EPA under RCRA or CERCLA depends on EPA's judgment about such factors as the severity and number of violations, damage sustained, and history of noncompliance.

Appeals

RCRA's regulations and CERCLA's agreements set out procedures that agencies must follow when challenging an EPA-assessed penalty. The RCRA process for contesting an enforcement action by EPA requires an agency to respond to EPA's complaint within 30 days. The agency may also request a formal public hearing as part of its response. EPA encourages the informal settlement of RCRA disputes at any time during the process. If an agency opts for a public hearing, an administrative law judge is appointed to hear the matter. The judge's decision on the nature and amount of the penalty may be appealed to an Environmental Appeals Board and beyond to the EPA Administrator. (See app. I for a more detailed discussion of the RCRA hearing process.)

Dispute resolution under CERCLA's interagency agreements employs two layers of committees comprising officials of EPA, the appealing agency, and the state when it is party to the agreement. If the initial committee does not resolve the dispute within a stipulated time, the dispute is forwarded to the next higher committee. If a settlement cannot be reached by either of the committees, the dispute is referred to the EPA Administrator for final resolution. The agreements also state that all parties should pursue an informal resolution at the working level. (See app. II for a more detailed summary of CERCLA's dispute resolution process.)

Settlements

If the final settlement stipulates that the agency must make payment, the settlement may take one of two forms—cash only or cash plus a supplemental environmental project. EPA defines this project as an environmentally beneficial activity that an agency agrees to undertake as part of settling the enforcement action.

A supplemental project imposes a monetary cost on the agency. But according to EPA's policy guidance, the final settlement penalty will usually be lower for a violator who agrees to perform an acceptable supplemental project compared with the violator who does not. EPA notes that supplemental projects can play an additional role in securing environmental or public health protection and improvements. Examples include efforts to prevent pollution, improve the management of hazardous waste, or conduct environmental assessments and audits. Even if a supplemental project is undertaken, EPA requires that some amount of cash be paid.

EPA's Hazardous Waste Penalties at Federal Facilities

From November 1989 through October 1996, EPA assessed penalties totaling \$16.4 million in 61 cases against five federal agencies. The agencies were the Departments of Agriculture, Defense, Energy, and the Interior and the U.S. Coast Guard. Forty-one cases having EPA-assessed penalties of \$8.2 million were settled for \$8.4 million, including the value of supplemental environmental projects. Twenty cases with assessed penalties of \$8.2 million were still being negotiated. Of all 61 penalty cases, 33 involved violations of CERCLA's interagency agreements, and 28 involved violations under RCRA.¹

¹In 3 of the 33 cases, assessed penalties were expressed as an amount per week of violation. No total amounts were stated.

Of the 33 CERCLA cases, 30 were resolved as of October 1996, and 3 were still in negotiation. For the resolved cases, assessed penalties of about \$6.7 million were settled for about \$6.3 million. In five of these cases, supplemental environmental projects were a significant factor, accounting for about \$4.5 million in the final settlements. Three CERCLA cases with assessed penalties totaling about \$600,000 were still being negotiated.

Of the 28 RCRA cases, 11 were resolved as of October 1996, and 17 were still being negotiated. The assessed penalties for the settled cases totaled about \$1.5 million; they were settled for about \$2.2 million—which was more than the assessed amount because, in two cases, the agencies were willing to perform higher-valued supplemental environmental projects. EPA was still negotiating assessed penalties of about \$7.6 million for 17 cases. (See table 1.)

Table 1: Disposition of Cases Where EPA Assessed Penalties on Federal Agencies Under CERCLA and RCRA, as of October 1996

Dollars in thousands							
Law	Status	Number of cases	EPA-assessed penalty ^a	Final settlement			
				Cash	Supplemental environmental project	Total	
CERCLA	Resolved	30	\$6,680	\$1,747	\$4,537	\$6,284	
	Unresolved	3	595				
	Subtotal	33	7,275				
RCRA	Resolved	11	1,516	623	1,528	2,151	
	Unresolved	17	7,648				
	Subtotal	28	9,164				
Total	Resolved	41	\$8,196	\$2,370	\$6,065	\$8,435	
	Unresolved	20	\$8,243				
	Total	61	\$16,439				

^aIn three CERCLA cases, assessed penalties were expressed as an amount per week of violation. Because no total amounts were calculated, the table does not present assessed penalties for these cases.

Source: GAO's presentation of EPA's data.

CERCLA penalties may be imposed when agencies do not meet the terms and conditions of the interagency agreements they signed. For example, agencies may be penalized when they do not complete site contamination studies, prepare cleanup plans, or undertake required cleanup action within the timetables and deadlines called for in the agreements. According to EPA officials, penalties are usually not assessed until agencies

fall substantially behind in their commitments. RCRA penalties are generally imposed when agencies fail to conform their hazardous waste activities, such as waste treatment, storage, or disposal, to the conditions stated in their permits.

Costs of Resolving Agencies' Environmental Disputes With EPA

We obtained from agency officials their estimates of the costs of negotiating settlements of assessed penalties for (1) CERCLA violations at the Army's former West Virginia Ordnance Works and Energy's Rocky Flats Environmental Technology Site and (2) a RCRA violation at the El Centro Naval Air Facility. (See apps. III, IV, and V for a more detailed discussion of each case.) The estimates include salaries, fringe benefits and other indirect costs, and travel costs. The three cases represented about 36 percent of all EPA-assessed CERCLA and RCRA penalties.

At the West Virginia Ordnance Works, EPA assessed a \$2 million penalty on the basis of its assertion that the Army missed a deadline for submitting draft cleanup studies and did not fully implement a community relations plan. The case was settled for \$500,000 after a 7-month negotiation process. EPA assessed a \$3.7 million penalty for Rocky Flats' failure to meet deadlines for completing cleanup studies set out in the facility's interagency cleanup agreement. Energy agreed to a \$700,000 cash payment and two supplemental environmental projects valued at \$2.1 million following 4 months of informal negotiations. At the El Centro Naval Air Facility, EPA assessed a \$258,000 RCRA penalty for various hazardous waste management violations, including improper storage. The case was settled for a \$100,000 cash payment and two supplemental projects valued at \$283,000 after 20 months of informal negotiations.

According to their estimates, Energy, Defense, and EPA expended about \$364,000 to settle these three cases. Because each case has its own unique attributes, we cannot say whether these costs would be typical for all cases. We did note that for the most part, the settlement costs reflect the number of personnel assigned to a case and the time they devote to its resolution. (See table 2.)

Table 2: EPA-Assessed Penalties, Final Settlements, and Estimated Negotiation Costs for Three Federal Facilities

Dollars in thousands					
Facility	EPA-assessed penalty	Final settlement		Total	Estimated negotiation cost
		Cash	Supplemental environmental project		
West Virginia Ordnance Works	\$2,025	\$500	\$0	\$500	\$175
Rocky Flats	3,700	700	2,100	2,800	62
El Centro	258	100	283	383	127
Total	\$5,983	\$1,300	\$2,383	\$3,683	\$364

Source: GAO's analysis of data from EPA, Army, Navy, and Energy.

Table 3 presents data on the duration of penalty negotiations, the number of personnel who worked on the case, and additional details on the costs of negotiating a settlement. Salaries constitute the largest portion (62 percent) of all costs, fringe benefits and other indirect costs constitute 32 percent, and travel represents the remaining 6 percent.

Table 3: Estimated Penalty Negotiation Costs, Number of Staff, Hours Worked, and Length of Negotiations for Three Federal Facilities

Category	Facility			Total
	West Virginia Ordnance Works	Rocky Flats Environmental Technology Site	El Centro Naval Air Facility	
Number of staff	28	25	18	71
Hours worked	2,491	1,185	2,732	6,408
Negotiation period (months)	7	4	20	31
Negotiation costs				
Salaries	\$117,312	\$41,364	\$72,221	\$230,897
Fringe benefits and other indirect costs	42,569	16,556	52,243	111,368
Travel	\$15,600	\$3,575	\$2,953	\$22,128
Total	\$175,481	\$61,495	\$127,417	\$364,393

Source: GAO's presentation of data from EPA, Army, Energy, and Navy.

All three cases were settled at management levels within EPA and the penalized agency. The West Virginia Ordnance case was settled by the

Deputy Assistant Secretary of the Army and the acting EPA Region 3 Administrator; the Rocky Flats case, by the Energy facility manager and the Deputy Administrator of EPA's Region 8; and the El Centro case, by the base commanding officer and the hazardous waste division director of EPA's Region 9.

EPA officials told us that despite the costs of negotiating settlements of environmental penalties, the penalties are effective enforcement techniques. In their opinion, the unwanted attention that results from EPA's public disclosure of violations and penalties and the possible need for agencies to seek special funding to pay them are strong inducements for compliance with hazardous waste requirements.

Agency Comments and Our Evaluation

We provided the Departments of Defense and Energy and EPA with a draft of this report for their review and comment. We met with officials of these agencies, including a representative of the Office of the Under Secretary of Defense-Environmental Security and the Senior Enforcement Counsel, Federal Facilities Enforcement Office, EPA. In addition, we discussed the draft with Energy headquarters and Rocky Flats officials from their respective Office of General Counsel.

Overall, the agencies believed that our report was factually accurate. The agencies had some concern about the interpretation of some information and wanted us to include additional information. We revised our report accordingly. In addition, the agencies provided us with editorial and technical comments that we incorporated into the report as appropriate.

To respond to this report's objectives, we visited several Defense and Energy field installations and reviewed documentation on the processes followed and costs incurred in establishing final settlements. We also met with officials from EPA, Defense, and Energy headquarters units to review data on the overall number and status of assessed penalties. We asked EPA and the Departments of Defense and Energy to provide us with their best estimates of the costs they incurred to reach settlement. These estimates include hours worked, salaries, fringe benefits, other indirect costs, and travel. Some of the estimates are based on officials' recollections of past events. We discussed the estimates provided by the agencies with agency officials but did not verify them.

We reviewed pertinent laws and regulations and examined EPA's guidance on assessing environmental penalties. We conducted our review from August 1996 through January 1997 in accordance with generally accepted government auditing standards. Appendix VI contains additional information on our scope and methodology.

As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 5 days after the date of this letter. At that time, we will send copies to the Administrator of EPA and the Secretaries of Defense and Energy. We will also make copies available to others on request. Please call me at (202) 512-6520 if you or your staff have any questions. The major contributors to this report are listed in appendix VII.

Sincerely yours,

A handwritten signature in black ink that reads "Stanley J. Czerwinski". The signature is written in a cursive style with a large, stylized 'S' at the beginning.

Stanley J. Czerwinski
Associate Director, Environmental
Protection Issues

Contents

Letter	1
Appendix I	12
RCRA's Penalty	12
Resolution Process	12
for Federal Facilities	
Public Hearing	
Informal Settlement Negotiations	
Appendix II	13
CERCLA's Penalty	
Resolution Process	
for Federal Facilities	
Appendix III	14
Summary of CERCLA	
Enforcement Action:	
West Virginia	
Ordnance Works	
Appendix IV	16
Summary of CERCLA	
Enforcement Action:	
Rocky Flats	
Environmental	
Technology Site	
Appendix V	18
Summary of RCRA	
Enforcement Action:	
U.S. Naval Air Facility,	
El Centro	

Appendix VI Objectives, Scope, and Methodology	20
--	----

Appendix VII Major Contributors to This Report	22
--	----

Tables	
Table 1: Disposition of Cases Where EPA Assessed Penalties on Federal Agencies Under CERCLA and RCRA, as of October 1996	5
Table 2: EPA-Assessed Penalties, Final Settlements, and Estimated Negotiation Costs for Three Federal Facilities	7
Table 3: Estimated Penalty Negotiation Costs, Number of Staff, Hours Worked, and Length of Negotiations for Three Federal Facilities	7
Table III.1: Estimated Number of Army and EPA Staff, Hours Worked, and Costs Involved in Settling Assessed CERCLA Penalty at the West Virginia Ordnance Works	15
Table IV.1: Estimated Number of EPA and Energy Staff, Hours Worked, and Costs Involved in Settling Assessed CERCLA Penalty at the Rocky Flats Environmental Technology Site	17
Table V.1: Estimated Number of EPA and U.S. Navy Staff, Hours Worked, and Costs Involved in Settling Assessed RCRA Penalty at the U.S. Naval Air Facility, El Centro	19

Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
EPA	Environmental Protection Agency
GAO	General Accounting Office
NAF	Naval Air Facility
NAVFAC	Naval Facilities Engineering Command
RCRA	Resource Conservation and Recovery Act

RCRA's Penalty Resolution Process for Federal Facilities

The adjudication process for all enforcement actions taken under the Resource Conservation and Recovery Act (RCRA) is governed by the Environmental Protection Agency's (EPA) Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (40 C.F.R. part 22). These rules establish the timing and procedures that a federal agency must follow to preserve its appeal rights. Under these rules, an agency may either elect to challenge any of EPA's RCRA enforcement actions through a public hearing or engage in an informal settlement negotiation. EPA's regulations encourage informal negotiations.

Public Hearing

- EPA's notice of violation and compliance order is final unless the penalized agency files a response and requests a public hearing within 30 days.
- The agency's response must deny, admit to, or explain each of EPA's allegations. A failure to respond will constitute an admission of all alleged facts.
- If the agency fails to file a written answer within 30 days of EPA's order, the penalty assessed by EPA will become due and payable.
- If the agency requests a public hearing, it will be conducted by an EPA-appointed administrative law judge.
- An agency may appeal a hearing decision to an Environmental Appeals Board and beyond to the EPA Administrator.

Informal Settlement Negotiations

- Whether or not the agency requests a hearing, the agency may confer informally with EPA to discuss the alleged facts, violations, and penalty. But the informal conference does not affect the agency's responsibility to file a written response within 30 days of EPA's complaint. This informal conference may be pursued simultaneously with the public hearing procedure.
- Any settlement reached must be set out in a written agreement.
- If a settlement cannot be reached informally, filing a written response within 30 days of EPA's complaint preserves the agency's right to a hearing.

CERCLA's Penalty Resolution Process for Federal Facilities

Interagency cleanup agreements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) establish schedules for evaluating and cleaning up contamination at federal facilities. If agencies fail to comply with any terms or conditions relating to interim or final remedial action, the agreements authorize EPA to impose a penalty.

Should agencies disagree with EPA's assessed penalty, the agreements set forth a series of dispute resolution procedures. The agreements state that all parties should pursue an informal resolution at the working level. Failing an informal resolution, the agreements set out the following process:

- Within 30 days after any action that leads to or generates a dispute, the agency must submit to a Dispute Resolution Committee¹ a written statement setting forth the nature of the disagreement and, among other things, the technical, legal, or factual information that the agency relied upon to support its position.
- The Dispute Resolution Committee has 21 days to unanimously resolve the issue and prepare a written decision.
- If the committee cannot resolve the matter within the 21-day resolution period, the dispute is forwarded to a Senior Executive Committee.²
- The Senior Executive Committee has 21 days to reach a unanimous resolution. If unanimity is not achieved, the cognizant EPA Regional Administrator must issue a written position. If the two non-EPA members do not disagree with the Regional Administrator's decision within 21 days, they will be considered as being in agreement with EPA. If one of the members disagrees with the EPA decision, that member has 21 days to issue a written notice elevating the case to the EPA Administrator.
- The EPA Administrator has 21 days to issue a written decision, which is final on all parties. The Administrator's duties cannot be delegated.

¹While the makeup of the Dispute Resolution Committee varies, it is usually composed of the following three individuals (or their equivalents): the EPA regional waste management division director, the federal facility's deputy manager or deputy base commander, and a state environmental official.

²The Senior Executive Committee is usually composed of three individuals: the EPA Regional Administrator, the federal agency's Deputy Assistant Secretary (or equivalent official), and a state environmental representative of comparable rank.

Summary of CERCLA Enforcement Action: West Virginia Ordnance Works

During World War II, the U.S. Army manufactured TNT and other explosives at the West Virginia Ordnance Works—an 8,323-acre tract along the Ohio River. At the close of TNT-manufacturing operations in 1945, the facility was placed in standby status, and most of the industrial portion of the site was deeded to the state of West Virginia, which used it as a state park.

In May 1981, a West Virginia park official noticed an unusual seepage of red groundwater, causing West Virginia and EPA to investigate the incident. The shallow groundwater discharging to a nearby pond was found to contain TNT by-products. On the basis of these and other studies by EPA and the state, the site was listed on the Superfund National Priorities List in September 1983.

Because of the facility's status as a formerly used defense site, the Army became responsible for managing the cleanup. In September 1987 and July 1989, EPA and the Army entered into two separate interagency cleanup agreements.

On March 29, 1993, following several requests for compliance with the second interagency agreement, EPA assessed penalties of \$2.025 million, citing the Army's failure to deliver certain required documents. Specifically, EPA alleged that the Army failed to (1) submit four draft groundwater-monitoring plans for EPA's review (\$900,000 penalty) and (2) fully implement a community relations plan (\$1.125 million penalty).

The following is a chronology of significant events outlining the Army's and EPA's actions to settle the penalty.

- On April 9, 1993, the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) wrote EPA noting that the Secretary was unaware of EPA's significant concerns about the site's cleanup. The Army's letter formally invoked dispute resolution regarding the existence of and length of time for violations and the amount of the assessed penalties. The Army also provided EPA with a statement of technical, legal, and factual information to support the former's position.
- On May 5, 1993, EPA and Army representatives on the Dispute Resolution Committee met to resolve the dispute.
- From May 5 through May 18, 1993, the Dispute Resolution Committee attempted to resolve the issue through telephone conferences and exchanges of letters.

Appendix III
Summary of CERCLA Enforcement Action:
West Virginia Ordnance Works

- On May 19, 1993, the committee concluded that no resolution could be reached and formally elevated the dispute to the Senior Executive Committee.
- From May 19 through July 15, 1993, staff of the EPA and Army representatives to the Senior Executive Committee met, exchanged letters, and held telephone conferences to narrow the issues and refine the proposed terms of a resolution.
- From July 16 through September 23, 1993, the Senior Executive Committee members continued discussions during telephone conferences and exchanges of letters.
- On September 24, 1993, the Senior Executive Committee agreed to resolve the dispute for \$500,000 (reducing the original penalty by about \$1.5 million). EPA and the Army cited the need “to concentrate the parties’ efforts on environmental restoration activities” at the site. The terms of the resolution also noted that nothing in the agreement should be construed as an admission of liability by the Army.
- On October 6 and 18, 1993, the acting Administrator, EPA Region 3 (Philadelphia) and the Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health), respectively, agreed to a final settlement.

Table III.1 shows the Army’s and EPA’s estimates of staff assigned, hours charged, and costs involved in negotiating the final penalty.

Table III.1: Estimated Number of Army and EPA Staff, Hours Worked, and Costs Involved in Settling Assessed CERCLA Penalty at the West Virginia Ordnance Works

Agency	Number of staff	Hours worked	Costs of settling assessed penalty			
			Salaries	Fringe benefits and other indirect costs	Travel	Total
EPA Region 3	9	535	\$18,239	\$18,614	0	\$36,853
Army Corps of Engineers	19	1,956	99,073	23,955	\$15,600	138,628
Total	28	2,491	\$117,312	\$42,569	\$15,600	\$175,481

Source: GAO’s presentation of EPA’s and the Army’s data.

Summary of CERCLA Enforcement Action: Rocky Flats Environmental Technology Site

The Department of Energy's Rocky Flats facility, located on 6,500 acres 16 miles northwest of Denver, Colorado, produced plutonium components for Energy's nuclear weapons program. In late 1989, plutonium operations were suspended for various reasons, including concerns about health and safety. The site has been listed on the Superfund National Priorities List since October 1989.

In January 1991, EPA, Energy, and the state of Colorado signed an interagency cleanup agreement. Energy did not provide 14 remedial study documents required by the agreement—some were nearly a year overdue. According to EPA, these violations effectively rendered the entire agreement moot. Consequently, EPA, Energy, and Colorado agreed to negotiate Energy's penalty for noncompliance with the agreement and discuss the terms of a new agreement.

The following is a chronology of significant events outlining Energy's, EPA's, and Colorado's actions to informally resolve the penalty issue and prepare a new interagency agreement.

- On March 10, 1994, Energy, EPA, and the Colorado Department of Health met to discuss Rocky Flats' inability to meet pending and potential milestones established by the January 1991 agreement. EPA assessed total penalties of \$3.7 million.
- On April 26, 1994, the parties agreed to a single settlement for all actual and anticipated violations through January 1995. As part of the settlement, Energy agreed to undertake supplemental environmental projects. The settlement terms also required a new cleanup agreement for the Rocky Flats facility.
- On May 2, 1994, Energy offered a settlement of \$2.8 million consisting of \$750,000 cash and the remainder of \$2.1 million in supplemental environmental projects.
- From May 9 through May 12, 1994, the parties held discussions about a settlement. Rocky Flats officials indicated that \$2.8 million was the highest amount they were authorized to propose—any larger sums would require negotiations with Energy headquarters staff.
- On May 17, 1994, the parties agreed to a \$2.8 million settlement, thus reducing the \$3.7 million penalty by \$900,000, and continued discussions about the possible use of supplemental environmental projects.
- From May 26 through June 23, 1994, the parties discussed proposed settlement language and the state of Colorado's concerns.
- On July 7, 1994, the Deputy Regional Administrator, EPA Region 8; the Manager, Rocky Flats Field Office; and the Director, Office of

Appendix IV
Summary of CERCLA Enforcement Action:
Rocky Flats Environmental Technology Site

Environment, Colorado Department of Health, agreed to a final settlement. Energy agreed to pay \$350,000 to the Superfund account, \$350,000 to the Colorado Department of Health, and \$2.1 million to acquire 900 acres adjoining the facility for open space preservation as a supplemental environmental project. The parties further agreed to use best efforts to reach a new cleanup agreement by January 31, 1995.

Table IV.1 shows Energy's and EPA's estimates of costs incurred to resolve penalty issues.

Table IV.1: Estimated Number of EPA and Energy Staff, Hours Worked, and Costs Involved in Settling Assessed CERCLA Penalty at the Rocky Flats Environmental Technology Site

Agency	Number of staff	Hours worked	Costs of settling assessed penalty			Total
			Salaries	Fringe benefits and other indirect costs	Travel	
Energy						
HQ	9	199	\$9,567	\$1,147	\$1,575	\$12,289
Rocky Flats	7	748	23,708	4,873	2,000	30,581
Subtotal	16	947	33,275	6,020	3,575	42,870
EPA						
HQ	2	6	317	85	0	402
Region 8	7	232	7,773	10,450	0	18,223
Subtotal	9	238	8,090	10,535	0	18,625
Total	25	1,185	\$41,365	\$16,555	\$3,575	\$61,495

Note: Some portion of these costs was spent on negotiating a new site cleanup agreement. These costs cannot be determined separately.

Legend

HQ = headquarters

Source: GAO's presentation of Energy's and EPA's data.

Summary of RCRA Enforcement Action: U.S. Naval Air Facility, El Centro

The U.S. Naval Air Facility, El Centro—located approximately midway between San Diego, California, and Yuma, Arizona—furnishes support for U.S. Navy carrier aircraft. The facility provides tactical air training, such as carrier-landing practice, air-to-air and air-to-ground weapons training, and air combat maneuvers.

On January 20, 1993, EPA conducted an inspection at El Centro and determined that the facility violated various RCRA provisions. The following is a chronology of EPA's and the Navy's efforts to resolve the RCRA enforcement action.

- On May 3, 1993, EPA filed a compliance order with the cognizant EPA regional office hearing clerk alleging a variety of RCRA violations at El Centro. Among other things, the order noted (1) a failure to determine whether waste was hazardous, (2) the storage of incompatible waste, (3) the failure to adequately train personnel, and (4) the mismanagement of waste accumulation areas. EPA assessed a penalty of \$257,580.
- On June 9, 1993, the Navy filed an "answer" to EPA's complaint and requested an opportunity to meet with EPA to resolve the matter.
- On July 12, 1993, EPA and the Navy held an initial meeting at which the Navy presented information regarding the violations and presented a settlement offer. The Navy also inquired whether a portion of the penalty could be satisfied through supplemental environmental projects.
- EPA requested additional information, which the Navy provided in September 1993. From September 30 through December 7, 1993, EPA and the Navy submitted various offers and counteroffers.
- On January 20, 1994, a second meeting was held, and the parties reached an agreement in principle. The total penalty would be \$129,309, of which \$100,000 would be paid in cash and the balance would be suspended on the condition that the Navy perform two supplemental environmental projects.
- From February through July 1994, various discussions occurred about the exact nature of the supplemental projects. It was agreed that the first project would consist of installing a system that uses nontoxic solutions to clean aircraft parts. The second project would involve building a Hazardous Waste Minimization Center to reduce the volume of hazardous waste by controlling the procurement and use of materials. (The eventual cost of these two supplemental projects was \$283,480.)
- On August 29, 1994, EPA and the Navy formally agreed to a "Consent Agreement and Consent Order," which was filed formally with EPA's regional hearing examiner.

Appendix V
Summary of RCRA Enforcement Action:
U.S. Naval Air Facility, El Centro

- On September 14, 1994, the Navy directed that the base operating support contractor for the El Centro facility pay \$60,466 as its share for penalties assessed in areas where the contractor exercised direct control and responsibility.

Table V.1 shows the Navy's and EPA's estimates of staff assigned, hours charged, and costs involved to reach settlement.

Table V.1: Estimated Number of EPA and U.S. Navy Staff, Hours Worked, and Costs Involved in Settling Assessed RCRA Penalty at the U.S. Naval Air Facility, El Centro

Agency	Number of staff	Hours worked	Costs of settling assessed penalty			Total
			Salaries	Fringe benefits and other indirect costs	Travel	
Civilian Navy staff						
NAF— El Centro	8	992	\$18,367	\$4,939		\$23,306
NAVFAC— San Diego	1	765	24,452	30,076		54,528
Subtotal	9	1,757	42,819	35,015		77,834
Military	4	495	14,274	0	\$2,953	17,227
Total—Navy	13	2,252	57,093	35,015	2,953	95,061
EPA Region 9	5	480	15,128	17,228		32,356
Total	18	2,732	\$72,221	\$52,243	\$2,953	\$127,417

Legend

NAF = Naval Air Facility

NAVFAC = Naval Facilities Engineering Command

Source: GAO's presentation of the Navy's and EPA's data.

Objectives, Scope, and Methodology

We were asked to determine (1) the number and dollar amount of penalties assessed by EPA against other federal agencies for violations under RCRA and CERCLA and (2), for selected cases, the costs associated with negotiating the amount of the penalty.

To address our first objective, we compiled information on penalties that EPA had assessed for agencies' violations of CERCLA's interagency agreements and RCRA at 61 federal facility sites. This information was based on EPA-developed data of penalties against the Departments of Agriculture, Defense, Energy, and the Interior and the U.S. Coast Guard. By reviewing these cases, we were able to determine the penalties assessed initially by EPA as well as the final penalty amounts negotiated between EPA and the agencies.¹

To address our second objective, we selected for further review three resolved penalty cases that represent more than a third of the value of all the assessed penalties. For the Rocky Flats case study, we visited Energy's headquarters, Washington, D.C.; Energy's Rocky Flats Environmental Technology Site, Rocky Flats, Colorado; and EPA's regional office, Denver, Colorado. For the West Virginia Ordnance Works study, we visited the U.S. Army Corps of Engineers' headquarters, Washington, D.C., the Corps' Ohio River Division, Cincinnati, Ohio; and EPA's regional office, Philadelphia, Pennsylvania. For the El Centro case, we visited the Naval Air Facility, El Centro, California; the Naval Facilities Engineering Command, Southwest Division, San Diego, California; and the EPA regional office, San Francisco, California.

According to the agency officials we interviewed, separate cost records on settling interagency disputes generally do not exist. However, the negotiation period is usually the time between the agency's notification that it will formally contest the EPA-assessed penalty and the final resolution. Using this reference point, we asked EPA and the Departments of Defense and Energy to provide us with their best estimates of the costs they incurred to reach settlement, including salaries, fringe benefits, other indirect costs, and travel. Some of the estimates are based on officials' recollections of past events. We discussed the estimates provided by the agencies with agency officials but did not verify them.

¹We noted that the Nuclear Regulatory Commission also has authority to penalize federal agencies for regulatory violations. Since October 1979, the Commission has assessed fines totaling \$265,000 on federal agencies including Defense, Veterans Affairs, the U.S. Geological Survey, and Agriculture. Through September 1996, the Commission had collected \$251,000. The fines were imposed for infractions of the Commission's regulations on the management of nuclear materials. According to Commission officials, federal agencies have never invoked the appeals process available to dispute the Commission's fines.

Appendix VI
Objectives, Scope, and Methodology

We gathered policy guidance and other documentation on the RCRA and CERCLA dispute processes as well as EPA's supplemental environmental project policy. We also met with officials at EPA, Defense, and Energy to obtain their views on the resolution of disputes.

We conducted our review from August 1996 through January 1997 in accordance with generally accepted government auditing standards.

Major Contributors to This Report

Resources,
Community, and
Economic
Development
Division, Washington,
D.C.

James F. Donaghy, Assistant Director
John D. Yakaitis, Evaluator-in-Charge
Earl P. Williams, Jr., Communications Analyst

Office of the General
Counsel, Washington,
D.C.

Richard P. Johnson, Attorney

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

**U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015**

or visit:

**Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC**

Orders may also be placed by calling (202) 512-6000 or by using fax number (301) 258-4066, or TDD (301) 413-0006.

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested

